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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/993,158

11/16/2001

Kenneth B. Higgins

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12/24/2008

Legal Department (M-495)

P.O. Box 1926

Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/993,158	<b>Applicant(s)</b> HIGGINS ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Disposition of Claims: Claims pending in the application are 1,3-35,38,40-49,58-72,77-79,81-85,88-97,99,100,102-128,130,131,134-136,138,141 and 151.

Continuation of Disposition of Claims: Claims rejected are 1,3-35,38,40-49,58-72,77-79,81-85,88-97,99,100,102-128,130,131,134-136,138,141 and 151.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 17, 2008, has been entered.

### ***Response to Amendment***

2. Applicant's amendment filed the RCE has been entered. Claims 26 and 79 have been amended as requested. Claims 2, 36, 37, 39, 50-57, 73-76, 80, 86, 87, 98, 101, 129, 132, 133, 137, 139, 140, and 142-150 have been cancelled. The pending claims are 1, 3-35, 38, 40-49, 58-72, 77-79, 81-85, 88-97, 99, 100, 102-128, 130, 131, 134-136, 138, 141, and 151.

3. Said amendment is sufficient to withdraw the objections to claims 26 and 79 as set forth in sections 4 and 5 of the last Office Action (Final Rejection mailed 02/15/08).

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 1, 3-35, 38, 40-49, 58-72, 77-79, 81-85, 88-97, 99, 100, 102-128, 130, 131, 134-136, 138, 141, and 151 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 07-275107 issued to Ito et al. in view of US 4,522,857 issued to Higgins as set forth in section 7 of the last Office Action.

Applicant has not amended the claims in an attempt to overcome the prior art rejection. Rather, applicant traverses said rejection by asserting that neither Ito nor Higgins disclose flame lamination, the use of a flame laminated composite, or the like (Amendment, Page 19, 3rd paragraph). This argument is unpersuasive since there does not appear to be a structural difference between a flame laminated bond, as claimed by applicant, and a bond made by heat and pressure, as described by Ito. It is asserted that flame lamination is but a specific type of bonding via heat and pressure. Applicant has provided no evidence showing that flame lamination produces a structurally different product than that produced by the method of Ito.

Applicant also traverses the rejection by asserting, "In a very particular embodiment (see, for example, claims 49 and 88, and Figures 31 and 32), the backing composite has a glass layer flame laminated to one side and a felt layer flame laminated to the other side." (Amendment, page 19, 4<sup>th</sup> paragraph). In response, it is first noted that claims 49 and 88 do not limit the reinforcing material to a glass layer or the (textile) backing material to a felt layer. Secondly, this argument is not necessarily pertinent to the other pending claims. In other words, the features upon which applicant relies (i.e., a glass layer flame laminated to one side of the backing composite and a felt layer flame laminated to the other side) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the

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specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Thus, applicant's arguments are found unpersuasive and the above rejection is maintained.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794